

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE GAMBINO-RUIZ,

Petitioner,

v.

WARDEN,

Respondent.

No. 2:23-cv-00955-DAD-KJN (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
HABEAS PETITION DUE TO  
PETITIONER'S FAILURE TO PROSECUTE  
AND TO COMPLY WITH A COURT ORDER

(Doc. No. 4)

Petitioner Jose Gambino-Ruiz is a federal prisoner proceeding *pro se* with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 26, 2023, the court ordered petitioner to either file a motion to proceed *in forma pauperis* or pay the required filing fee in order to proceed with this habeas action. (Doc. No. 3.) The court provided petitioner with thirty days to comply with that order. (*Id.* at 1.) Petitioner has not paid the required filing fee to proceed with this action nor filed an application to proceed *in forma pauperis*, and the deadline in which to do so has passed.

Accordingly, on August 3, 2023, the assigned magistrate judge issued findings and recommendations recommending that this action be dismissed, without prejudice, due to petitioner's failure to comply with the court's order and failure to prosecute this action. (Doc.

No. 4.) The findings and recommendations were served upon petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 1.) To date, petitioner has not filed any objections and the time in which to do so has passed.

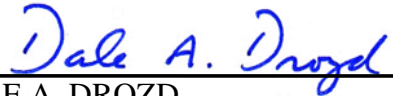
In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the pending findings and recommendations are supported by the record and proper analysis.

Accordingly,

1. The findings and recommendations issued on August 3, 2023 (Doc. No. 4) are adopted in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed, without prejudice;<sup>1</sup> and
3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: October 3, 2023

  
DALE A. DROZD  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Because petitioner is a federal prisoner bringing a § 2241 petition, a certificate of appealability is not required. *See Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008) (“The plain language of [28 U.S.C.] § 2253(c)(1) does not require a petitioner to obtain a COA in order to appeal the denial of a § 2241 petition.”).